

1970

## c 52 Bulk Sales Act

Ontario

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### Bibliographic Citation

*Bulk Sales Act*, RSO 1970, c 52

### Repository Citation

Ontario (1970) "c 52 Bulk Sales Act," *Ontario: Revised Statutes*: Vol. 1970: Iss. 1, Article 55.

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## CHAPTER 52

## The Bulk Sales Act

*See Sec 1  
Retail Sales  
Act*

**1. In this Act,**Interpre-  
tation

- (a) "buyer" means a person who acquires stock in bulk;
- (b) "court" means the county or district court of the county or district in which the seller's stock or a substantial part thereof is located or the seller's business or trade or a substantial part thereof is carried on at the time of the sale in bulk;
- (c) "creditor" means any creditor, including an unsecured trade creditor and a secured trade creditor;
- (d) "judge" means a judge of the court;
- (e) "proceeds of the sale" includes the purchase price and any security therefor or for any part thereof, and any other consideration payable to the seller or passing from the buyer to the seller on a sale in bulk, and the moneys realized by a trustee under a security or by the sale or other disposition of any property coming into his hands as the consideration or part of the consideration for the sale, less the proper and reasonable costs of the seller's solicitor for completing the sale;
- (f) "sale", whether used alone or in the expression "sale in bulk", includes a transfer, conveyance, barter or exchange, but does not include a pledge, charge or mortgage;
- (g) "sale in bulk" means a sale of stock in bulk out of the usual course of business or trade of the seller;
- (h) "secured trade creditor" means a person to whom a seller is indebted, whether or not the debt is due,
  - (i) for stock, money or services furnished for the purpose of enabling the seller to carry on business, or
  - (ii) for rental of premises in or from which the seller carries on business,and who holds security or is entitled to a preference in respect of his claim;
- (i) "seller" means a person who sells stock in bulk;

- (j) "stock" means,
  - (i) goods, wares, merchandise or chattels ordinarily the subject of trade and commerce,
  - (ii) the goods, wares, merchandise or chattels in which a person trades or that he produces or that are the output of a business, or
  - (iii) the fixtures, goods and chattels with which a person carries on a trade or business;
- (k) "stock in bulk" means stock or part thereof that is the subject of a sale in bulk and all other property, real or personal, that together with stock is the subject of a sale in bulk;
- (l) "unsecured trade creditor" means a person to whom a seller is indebted for stock, money or services furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim. R.S.O. 1960, c. 43, s. 1.

Application  
of Act

R.S.O. 1970,  
c. 269

R.S.C. 1952,  
c. 14

**2.** This Act applies to every sale in bulk except a sale in bulk by an executor, an administrator, a committee of the estate of a mentally incompetent or incapable person, the Public Trustee as committee under *The Mental Health Act* or an order made under that Act, a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), a liquidator or official receiver, or a public official acting under judicial process. R.S.O. 1960, c. 43, s. 2, *amended*.

Judicial  
exemption

**3.—(1)** A seller may apply to a judge for an order exempting a sale in bulk from the application of this Act, and the judge, if he is satisfied, on the affidavit of the seller and any other evidence, that the sale is advantageous to the seller and will not impair his ability to pay his creditors in full, may make the order, and thereafter this Act, except section 7, does not apply to the sale.

Notice,  
terms and  
directions

**(2)** The judge may require notice of the application for the order to be given to the creditors of the seller or such of them as he directs, and he may in the order impose such terms and give such directions with respect to the disposition of the proceeds of the sale or otherwise as he considers appropriate. R.S.O. 1960, c. 43, s. 3.

Statement  
of  
creditors

**4.—(1)** The buyer, before paying or delivering to the seller any part of the proceeds of the sale, other than the part mentioned in section 6, shall demand of and receive from the seller, and the seller shall deliver to the buyer, a statement verified by the affidavit of the seller in Form 1.

Section 2 of the Bulk Sales Act excludes from the application of that Act a sale in bulk by an executor, an administrator, a committee of the estate of a mentally incompetent or incapable person, the Public Trustee as committee under The Mental Health Act or an order made under that Act, a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the Bankruptcy Act (Canada), a liquidator or official receiver, or a public official acting under judicial process.

Effective July 12, 1977, section 4 of The Retail Sales Tax Act reads as follows:

#### SECTION 4 — Sales in Bulk

The amendments to section 4 clarify that the certificate required by this section of the Act is necessary only when the sale in bulk is one to which the Bulk Sales Act applies. Under section 2 of the Bulk Sales Act, certain classes of sales are exempted from the application of this Act, although they are defined to be sales in bulk. These exempted sales will no longer require a certificate under section 4 of The Retail Sales Tax Act.

"4. (1) No person shall dispose of his stock through a sale in bulk to which The Bulk Sales Act applied without first obtaining a certificate in duplicate from the Minister that all taxes collectable or payable by such person have been paid or that such person has entered into an arrangement satisfactory to the Minister for the payment of such taxes or for securing their payment.

(2) Every person purchasing stock through a sale in bulk to which The Bulk Sales Act applies shall obtain from the person selling such stock the duplicate copy of the certificate furnished under subsection 1, and, if he fails to do so, he is responsible for payment to the Treasurer of Ontario of all taxes collectable or payable by the person thus disposing of his stock through a sale in bulk."



(2) The statement shall show the names and addresses of the unsecured trade creditors and the secured trade creditors of the seller and the amount of the indebtedness or liability due, owing, payable, or accruing due, or to become due and payable, by the seller to each of them, and, with respect to the claims of the secured trade creditors, the nature of their security and whether their claims are due or, in the event of sale, become due on the date fixed for the completion of the sale. R.S.O. 1960, c. 43, s. 4.

Contents  
of  
statement

5. From and after the delivery of the statement mentioned in section 4, no preference or priority is obtainable by any creditor of the seller in respect of the stock in bulk, or the proceeds of the sale thereof, by attachment, garnishment proceedings, contract or otherwise. R.S.O. 1960, c. 43, s. 5.

No  
preference  
or priority

6. The buyer may, before he receives the statement mentioned in section 4, pay to the seller on account of the purchase price a sum not exceeding 10 per cent of the purchase price which shall form part of the proceeds of sale and which the seller shall hold in trust,

Part  
payment

(a) for the buyer until completion of the sale, or, if the sale is not completed and the buyer becomes entitled to repayment of it, until it is repaid to the buyer; or

(b) where the sale is completed and a trustee has been appointed, for the trustee until the seller complies with clause b of section 10. R.S.O. 1960, c. 43, s. 6.

7. Any creditor of a seller is entitled to demand of the seller or the buyer, in which case the seller or the buyer, as the case may be, shall forthwith deliver to the creditor, particulars in writing of the sale in bulk. R.S.O. 1960, c. 43, s. 7.

Particulars

8.—(1) Where the buyer has received the statement mentioned in section 4, he may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock in bulk,

Completion  
of sale

(a) if the statement mentioned in section 4 discloses that the claims of the unsecured trade creditors of the seller do not exceed a total of \$2,500 and that the claims of the secured trade creditors of the seller do not exceed a total of \$2,500 and the buyer has no notice that the claims of the unsecured trade creditors of the seller exceed a total of \$2,500 and that the claims of the secured trade creditors of the seller exceed a total of \$2,500; or



- (b) if the seller delivers a statement verified by his affidavit showing that the claims of all unsecured trade creditors and all secured trade creditors of the seller of which the buyer has notice have been paid in full; or
- (c) if adequate provision has been made for the immediate payment in full of all claims of the unsecured trade creditors of the seller of which the buyer has notice and of all claims of secured trade creditors of the seller that are or become due and payable upon completion of the sale of which the buyer has notice, so long as their claims are paid in full forthwith after completion of the sale, but where any such creditor has delivered a waiver in Form 2 no provision need be made for the immediate payment of his claim.

Idem

(2) Where the buyer has received the statement mentioned in section 4, he may pay or deliver the proceeds of the sale to the trustee and thereupon acquire the property of the seller in the stock in bulk, if the seller delivers to the buyer,

- (a) the consent to the sale in Form 3 of unsecured trade creditors of the seller representing not less than 60 per cent in number and amount of the claims that exceed \$50 of all the unsecured trade creditors of the seller of whose claims the buyer has notice; and
- (b) an affidavit of the seller deposing that he delivered or caused to be delivered to all of his unsecured trade creditors and secured trade creditors personally or by registered mail addressed to them at their last known addresses at least fourteen days before the date fixed for the completion of the sale copies of the contract of the sale in bulk, the statement mentioned in subsection 1 of section 4, and the statement of affairs in Form 4, and deposing that the affairs of the seller as disclosed in the statement of affairs have not materially changed since it was made.

Documents  
to be  
exhibited

(3) Duplicate originals of the documents mentioned in clause b of subsection 2 shall be attached as exhibits to the affidavit mentioned therein. R.S.O. 1960, c. 43, s. 8.

Appointment  
of trustee

**9.—**(1) Where a sale in bulk is being completed under subsection 2 of section 8, a trustee shall be appointed,

- (a) by the seller with the consent in Form 3 of his unsecured trade creditors representing not less than 60 per cent in number and amount of the claims that exceed \$50 of the unsecured trade creditors as shown by the statement mentioned in section 4; or

- (b) by a judge upon the application of any person interested where the unsecured trade creditors of the seller representing not less than 60 per cent in number and amount of the claims that exceed \$50 as shown by the statement mentioned in section 4 have consented to the sale in bulk but have not consented to the appointment of a trustee, or where the trustee appointed under clause *a* is unable or unwilling to act.

(2) Every trustee shall forthwith give security in cash or by bond of a guarantee company satisfactory to a judge for the due accounting for all property received by him as trustee and for the due and faithful performance of his duties, and the security shall be deposited with the clerk of the court and shall be given in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of the judge and the amount of the security may be increased or decreased by the judge at any time. R.S.O. 1960, c. 43, s. 9. Security

**10.** Where a sale in bulk is completed under subsection 2 of section 8, When proceeds of sale to be paid over to trustee

- (a) the seller shall deliver to the trustee a statement verified by the affidavit of the seller showing the names and addresses of all creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them; and
- (b) the seller shall pay to the trustee all moneys received by him from the buyer on account of the purchase price under section 6; and
- (c) the buyer shall pay or deliver the balance of the proceeds of the sale to the trustee. R.S.O. 1960, c. 43, s. 10.

**11.**—(1) Within five days after the completion of a sale in bulk, the buyer shall file in the office of the clerk of the court an affidavit setting out the particulars of the sale, including the subject-matter thereof and the name and address of the trustee, if any, and exhibiting duplicate originals of the statement mentioned in section 4, the statement, if any, mentioned in clause *b* of subsection 1 of section 8, the waivers, if any, mentioned in clause *c* of subsection 1 of section 8 and the consent and affidavit, if any, mentioned in subsection 2 of section 8. Filings on completion of sale

(2) For services rendered in connection with the filings required by subsection 1, the clerk of the court is entitled to the following fees: Fees

- |                              |        |
|------------------------------|--------|
| 1. For filing affidavit..... | \$1.00 |
| 2. For a search .....        | .50    |



3. For a certificate of filing of affidavit . . . . . 50
4. For copies of affidavit and certifying the same,  
for every 100 words . . . . . 20
5. For production and inspection of affidavit . . . . . 10

Failure to  
file

(3) If the buyer fails to comply with subsection 1, a judge may at any time,

- (a) upon the application of the trustee or a creditor, order the buyer to comply therewith; or
- (b) upon the application of the buyer, extend the time for compliance therewith; or
- (c) upon the application of the buyer after the lapse of one year from the date of the completion of the sale in bulk and upon being satisfied that the claims of all unsecured trade creditors and secured trade creditors of the seller existing at the time of the completion of the sale have been paid in full and that no action or proceeding is pending to set aside the sale or to have the sale declared void and that the application is made in good faith and not for any improper purpose, make an order dispensing with compliance therewith. R.S.O. 1960, c. 43, s. 11.

Distribution  
of proceeds  
of sale

**12.—**(1) Where the proceeds of the sale are paid or delivered to a trustee under section 10, the trustee is a trustee for the general benefit of the creditors of the seller and he shall distribute the proceeds of the sale among the creditors of the seller, and, in making the distribution, all creditors' claims shall be proved in like manner and are subject to like contestation before a judge and, subject to section 13, are entitled to like priorities as in the case of a distribution under the *Bankruptcy Act* (Canada), as amended or re-enacted from time to time, and shall be determined as of the date of the completion of the sale.

R.S.C. 1952,  
c. 14

Notice

(2) Before making the distribution, the trustee shall cause a notice thereof to be published in at least two issues of a newspaper having general circulation in the locality in which the stock in bulk was situated at the time of the sale, and the trustee shall not make the distribution until at least fourteen days after the last of such publications.

Petition  
for  
receiving  
order

(3) Upon notice to the trustee within thirty days after the date of the filing of the documents mentioned in section 11 that a petition for a receiving order against the seller has been filed, the trustee shall not distribute the proceeds of the sale until the final disposition of the petition and, where a receiving order is made pursuant to the petition, the trustee shall pay the proceeds of the sale, after deducting therefrom his fee and disbursements, to the trustee appointed by the receiving order. R.S.O. 1960, c. 43, s. 12.

**13.** Nothing in this Act affects the rights of any municipality under *The Assessment Act* or Part XXIV of *The Municipal Act*. R.S.O. 1960, c. 43, s. 13, *amended*.

Municipal  
rights  
preserved  
R.S.O. 1970,  
cc. 32, 284

**14.**—(1) Subject to subsection 3, the fee of the trustee shall be as follows:

Fee of  
trustee

1. Where the proceeds of the sale do not exceed \$5,000 ..... \$ 250
2. Where the proceeds of the sale exceed \$5,000 but do not exceed \$25,000 ..... \$ 250  
plus 3 per cent of the amount by which the proceeds of the sale exceed \$5,000
3. Where the proceeds of the sale exceed \$25,000 but do not exceed \$100,000 ..... \$ 850  
plus 2 per cent of the amount by which the proceeds of the sale exceed \$25,000
4. Where the proceeds of the sale exceed \$100,000 \$ 2,350  
plus 1 per cent of the amount by which the proceeds of the sale exceed \$100,000

(2) In the absence of an arrangement between the seller and the trustee to the contrary, the fee, together with any disbursements made by the trustee, shall be deducted by him from the moneys to be paid to the creditors. Idem

(3) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness of the seller to his creditors, the fee of the trustee together with any disbursement made by the trustee shall be deducted by him from the excess proceeds to the extent of that excess, and any sum remaining unpaid thereafter shall be paid as provided in subsection 1. R.S.O. 1960, c. 43, s. 14. Idem

**15.**—(1) Any affidavit required to be made under this Act by a seller,

Who may  
make  
affidavits

- (a) if the seller is a partnership, shall be made severally by all of the partners; or
- (b) if the seller is a corporation, shall be made by an officer or director of the corporation and shall state that the deponent has a personal knowledge of the facts deposed to.

(2) Upon the application of a seller and upon being satisfied that good and sufficient cause exists that any affidavit required to be made under this Act should be made otherwise than under subsection 1, a judge may order accordingly. R.S.O. 1960, c. 43, s. 15. Idem

Effect of  
buyer  
failing to  
comply  
with  
Act  
Personal  
liability  
of buyer

**16.**—(1) A sale in bulk is voidable unless the buyer has complied with this Act.

(2) If a sale in bulk has been set aside or declared void and the buyer has received or taken possession of the stock in bulk, he is personally liable to account to the creditors of the seller for the value thereof, including all moneys, security and property realized or taken by him from, out of, or on account of, the sale or other disposition by him of the stock in bulk. R.S.O. 1960, c. 43, s. 16.

Who may  
bring  
action

**17.**—(1) An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by a creditor of the seller, and, if the seller is adjudged bankrupt, by the trustee of his estate.

Where no  
right of  
action

(2) No action shall be brought or proceeding taken in respect of real property included in a sale in bulk if the real property has been sold, transferred, charged or mortgaged to a *bona fide* purchaser, transferee, chargee or mortgagee for valuable consideration without actual notice of non-compliance with the Act by the buyer. R.S.O. 1960, c. 43, s. 17.

Burden  
of proof

**18.** In an action or proceeding in which a sale in bulk is attacked or comes in question, whether directly or indirectly, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk. R.S.O. 1960, c. 43, s. 18.

Limitation  
of action

**19.** No action shall be brought or proceeding taken to set aside or have declared void a sale in bulk for failure to comply with this Act unless the action is brought or the proceeding is taken either before the documents are filed under section 11 or within six months after the date on which the documents were filed under section 11. R.S.O. 1960, c. 43, s. 19.

## FORM 1

(Section 4 (1) )

*The Bulk Sales Act*

## STATEMENT AS TO SELLER'S CREDITORS

Statement showing names and addresses of all unsecured trade creditors and secured trade creditors of .....

of the ..... of ..... in the ..... of .....  
and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due by him to each of them.

## UNSECURED TRADE CREDITORS

| Name of Creditor | Address | Amount |
|------------------|---------|--------|
|                  |         |        |

## SECURED TRADE CREDITORS

| Name of Creditor | Address | Amount | Nature of Security | Due or becoming due on the date fixed for the completion of the sale |
|------------------|---------|--------|--------------------|--|
|                  |         |        |                    |  |

I, ....., of the ..... of ....., in the ..... of ....., make oath and say:

## 1. That the foregoing statement is a true and correct statement

- (a) of the names and addresses of all the unsecured trade creditors of the said ..... and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said ..... to each of the said unsecured trade creditors; and
- (b) of the names and addresses of all the secured trade creditors of the said ..... and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said ..... to each of the said secured creditors, the nature of their security, and whether they are or in the event of sale will become due and payable on the date fixed for the completion of the sale.

*(and, if the seller is a corporation)*

2. That I am ..... of the Corporation, and have personal knowledge of the facts herein deposed to.

SWORN before me, etc.

## FORM 2

(Section 8 (1) (c) )

*The Bulk Sales Act*

## WAIVER

In the matter of the sale in bulk

BETWEEN

*Seller*

— and —

*Buyer*

I, ....., of the ..... of .....,  
in the ..... of ....., a secured  
an unsecured trade  
creditor of the above-named seller, hereby waive the provisions of *The Bulk Sales Act* that  
require that adequate provision be made for the immediate payment in full of my claim  
forthwith after completion of the sale, and I hereby acknowledge and agree that the buyer may  
pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the  
seller in the stock without making provision for the immediate payment of my claim and that  
any right to recover payment of my claim may, unless otherwise agreed, be asserted against the  
seller only.

DATED at ..... this ..... day of ....., 19...

Witness:

R.S.O. 1960, c. 43, Form 2.

## FORM 3

(Sections 8 (2) (a) and 9 (1) (a) )

*The Bulk Sales Act*

## CONSENT

In the matter of the sale in bulk

BETWEEN:

*Seller*

— and —

*Buyer*

I, ....., of the ..... of .....  
in the ..... of ....., an unsecured trade creditor of the  
above-named seller, hereby acknowledge and agree;

1. that I have received,

(a) a copy of the statement showing the names and addresses of the unsecured trade creditors and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the seller, and showing the names and addresses of his secured trade creditors, the nature of their security and whether their claims are or, in the event of sale, become due on the date fixed for completion of the sale, and the amount of the indebtedness or liability due, or owing, payable or accruing due or to become due and payable by the seller;

(b) a statement of the affairs of the seller; and

(c) a copy of the contract of the sale in bulk;

2. that I consent to the sale; and

3. that I consent to the appointment of ..... as trustee.

DATED at ....., this ..... day of ....., 19....

Witness:

|

R.S.O. 1960, c. 43, Form 3.



## FORM 4

(Section 8 (2) (b) )

*The Bulk Sales Act*

## STATEMENT OF AFFAIRS

*Assets included in the Sale in Bulk*

(a) Amount of the proceeds of the sale. . . . . \$ . . . . .

*Assets not included in the Sale in Bulk*

(b) Stock-in-trade at cost price not exceeding fair value . . . . . \$ . . . . .

(c) Trade fixtures, fittings, utensils, etc. . . . . \$ . . . . .

(d) Book debts—Good . . . . . \$ . . . . .

Doubtful . . . . . \$ . . . . .

Bad . . . . . \$ . . . . .

Estimated to produce . . . . . \$ . . . . .

(e) Bills of exchange, promissory notes, etc. . . . . \$ . . . . .

(f) Cash in bank . . . . . \$ . . . . .

(g) Cash on hand . . . . . \$ . . . . .

(h) Livestock . . . . . \$ . . . . .

(i) Machinery, equipment, and plant . . . . . \$ . . . . .

(j) Real estate . . . . . \$ . . . . .

(k) Estimated value of securities in hands of secured creditors . . . . . \$ . . . . .

(l) Furniture . . . . . \$ . . . . .

(m) Life insurance policies . . . . . \$ . . . . .

(n) Stocks and bonds . . . . . \$ . . . . .

(o) Interest in estates . . . . . \$ . . . . .

(p) Other property, viz. . . . . \$ . . . . .

Total . . . . . \$ . . . . .

*Liabilities*

(q) Unsecured trade creditors . . . . . \$ . . . . .

(r) Secured trade creditors . . . . . \$ . . . . .

(s) Preferred creditors . . . . . \$ . . . . .

(t) All other liabilities, except contingent liabilities set out below . . . . . \$ . . . . .

Total . . . . . \$ . . . . .

Surplus or deficiency . . . . . \$ . . . . .

*Contingent Liabilities*

(u) Liabilities under endorsements and guarantees . . . . . \$ . . . . .

(v) All other contingent liabilities . . . . . \$ . . . . .

Total . . . . . \$ . . . . .

I, . . . . ., of the . . . . . of . . . . .,

in the . . . . . of . . . . ., make oath and say that the above statement is to the best of my knowledge and belief a full, true and complete statement of my affairs on the . . . . . day of . . . . ., 19 . . . ., (which date shall not be more than 30 days before the date of the affidavit) and fully discloses all my property of every description.

SWORN before me, etc.